

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the foregoing amendments and the following remarks.

Currently, claims 95-112 are pending in the present application, including independent claim 95. Independent claim 95, for instance, is directed to a diagnostic device that comprises a housing. The housing comprises an opening for receiving a sample and a channel in fluid communication with the opening. The diagnostic device also comprises a test strip that defines a test surface in fluid communication with the channel. A means for inducing a negative pressure differential on the sample (e.g., syringe) is provided to direct the sample through the channel to the test surface, and thereafter remove an unreacted portion of the sample from the test surface. The syringe contains a chamber for receiving the removed, unreacted portion of the sample.

In the Office Action, previous independent claims 69 and 83 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,677,133 to Oberhardt. Oberhardt is directed to a method for performing an affinity assay comprising: (1) contacting a sample to be assayed for the presence of an analyte with a dry reagent containing the analyte bound to a reaction cascade initiator, an antibody reactive with the analyte, and magnetic particles, to form an assay mixture in a reaction chamber; (2) incubating the assay mixture; (3) applying an oscillating or moving static magnetic field to the assay mixture; (4) activating the reaction cascade initiator to initiate a reaction cascade; (5) monitoring the response of the magnetic particles to the oscillating or rotating magnetic field to provide a time varying signal; and (6) determining the analyte concentration of the sample by analysis of the time varying signal. (Col. 4, lines 48-64).

Oberhardt describes carrying out its affinity assay method using a reaction slide, such as shown in Figures 1-4.

As correctly noted by the Examiner, one embodiment of Oberhardt employs a syringe to add the sample to the sample well 64. (Fig. 3; Col. 6, lines 30-38). However, independent claim 95 requires a syringe for inducing a *negative* pressure differential on the sample to direct it through a channel to a test surface, and thereafter remove an unreacted portion of the sample from the test surface. For instance, the present application describes a syringe 50 that includes a piston 52 slidingly and sealingly engaged with the inner wall of a cylindrical chamber 56. (See Figs. 1-7). The sample may be directed to the test surface 42 and then to the chamber 56 by simply pulling the handle 54 to induce the required negative pressure differential. To the contrary, the manner in which the syringe is employed in Oberhardt would require a *positive* pressure differential for directing and then a *negative* pressure differential for removing any unreacted portion. Clearly, the syringe of Oberhardt is not capable of fulfilling the limitations of independent claim 95.

Notwithstanding the above, the Office Action indicated that Fig. 4A of Oberhardt discloses an embodiment in which a negative pressure differential is employed. Regardless, Oberhardt still fails to disclose multiple aspects of independent claim 95. With respect to Fig. 4A, for instance, Oberhardt indicates that a vacuum source may be applied at vent 76 of reaction chamber 62. However, contrary to the vent/vacuum source cursorily mentioned in Oberhardt, independent claim 95 specifically requires that the negative pressure differential is induced by a *syringe* that also contains a *chamber for receiving the removed, unreacted portion of the sample*.

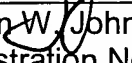
Moreover, independent claim 95 also requires a test strip that *defines a test surface* and that is *removably attached* to a housing comprising an opening for receiving the sample and a channel in fluid communication with the sample. In this manner, the test strip may be easily removed for viewing or placement in an analyzer. In Oberhardt, the reaction plate 20 defines the reaction chamber 62 (Fig. 4A). Notably, however, the reaction plate 20 is not removably attached to a housing, much less one that comprises an opening for receiving the sample and a channel in fluid communication with the sample as required by independent claim 95. Thus, for at least the reasons set forth above, Applicants respectfully submit that the present claims are not anticipated by Oberhardt.

It is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Snay is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

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